GOH KEAT POH & ORS A

v.

FARLIM PROPERTIES SDN BHD & OTHER APPEALS

COURT OF APPEAL, PUTRAJAYA B
ABDULL HAMID EMBONG JCA
HASAN LAH JCA
SULAIMAN DAUD JCA
[CIVIL APPEALS NO: P-02-239-2007, P-02-241-2007
& P-02-266-2007] C
18 AUGUST 2009

LAND LAW: *Sale of land - Agreement - Validity of - Beneficiaries under intestate estate contracted to sell rights, title and interest in estate before estate fully administered and distribution made - Whether beneficiaries held any interest or title in estate capable of being conveyed to purchaser - Whether a misconception to assume beneficiaries intended to sell their spes successionis in lands when such term not used in sale contracts* D

The estate of a deceased who died intestate held a 75% undivided share in certain lands ('the lands'). Six of the deceased's beneficiaries ('the beneficiaries') entered into sale and purchase agreements ('SPAs') with the respondent ('Farlim') to sell their undivided shares in the lands to Farlim. The SPAs were executed before administration of the deceased's estate had been completed and distribution to the beneficiaries of the proportions of the lands to which they were entitled was made according to law. Two other beneficiaries of the deceased, one of whom was Chor Phaik Har, did not sign the SPAs as they did not agree to the price offered by Farlim. Following the execution of the SPAs, Chor Phaik Har entered a private caveat on the lands which was removed by the High Court on Farlim's application but restored, on appeal, by the Federal Court. The Federal Court held that a beneficiary under an intestacy had no interest or property in the personal estate of a deceased person until the administration of his estate was completed and distribution made according to law. Accordingly, the beneficiaries had no interest or title in the deceased's estate which they could covenant to convey to Farlim ('the *Chor Phaik Har* decision'). The beneficiaries terminated the SPAs on the alleged failure of Farlim to complete the transaction and they proceeded to sell their interests in the lands to another company, Gerak Indera Sdn Bhd ('Gerak Indera'). Farlim brought an action against the beneficiaries and Gerak Indera in the High Court seeking a declaration that the SPAs were wrongly terminated; that the SPAs were valid and subsisting and should be specifically performed E F G H I

and that the sale and transfers of the beneficiaries' undivided shares in the lands to Gerak Indera were null and void. The High Court granted the reliefs sought by Farlim and also held that Gerak Indera did not acquire indefeasible title to the lands because it had fraudulently conspired with the beneficiaries to deprive Farlim of its right to the lands under the SPAs. The High Court ruled that although at the time the SPAs were executed the administration of the deceased's estate had not been completed and the beneficiaries were not vested with good title and interest to their shares in the lands, what they had sold under the SPAs were their *spes successionis* and the agreements were good and enforceable in equity as the beneficiaries had received valuable consideration thereunder. The beneficiaries and Gerak Indera appealed to the Court of Appeal against the High Court's decision.

Held (unanimously allowing the appeals with costs; setting aside the decision of the High Court)

Per Hasan Lah JCA delivering the judgment of the court:

(1) The issue of the validity of the SPAs was conclusively decided by the Federal Court in the *Chor Phaik Har* decision when it held the beneficiaries did not have interest or property in the deceased's estate and they could not have covenanted to convey any title to Farlim. The decision was binding on the parties to the SPAs and anyone who sought to rely on them to enforce their rights. (para 38)

(2) The court was unable to agree with the contention that the subject matter of the SPAs was the beneficiaries' *spes successionis* in the lands for the simple reason the Federal Court had made a finding that in the SPAs the beneficiaries had agreed to sell their rights, title and interest in their respective shares in the lands. The term *spes successionis* was never mentioned in the SPAs and Farlim never raised that issue before the Federal Court. As such the question of disposing a *spes successionis* did not arise. (para 36)

(3) Farlim had to abide by the Federal Court decision as *res judicata* applied not only to issues the court was actually required to decide but also to every issue the parties exercising reasonable diligence might have raised at that time. Farlim was therefore estopped from claiming the beneficiaries had agreed to sell their alleged *spes successionis* and the High Court was wrong in deciding that that was what the beneficiaries had intended to sell. (paras 36 & 37)

[Commentary: The Court of Appeal in this case found it fit to declare that it and all courts in the country were bound by stare decisis to follow the Chor Phaik Har decision of the Federal Court in that a beneficiary under an intestacy had no interest or property in the personal estate of a deceased person until his estate was fully administered and distribution made according to law. Until that was done the beneficiary had no title or interest in the estate which he could covenant to convey to another. The High Court in the instant matter failed to follow that decision and instead ruled that although the beneficiaries did not have good title and interest in the land when they contracted to sell the same, what they actually sold were their spes successionis and that the contracts were enforceable in equity. In ruling thus, the High Court had followed similar views expressed on that issue by the Court of Appeal in Farlim Properties Sdn Bhd v. Goh Keat Poh & Ors (And Other Appeals) [2003] 4 CLJ 505 although those views clearly contradicted the Chor Phaik Har decision]

Case(s) referred to:

Asia Commercial Finance (M) Berhad v. Kawal Teliti Sdn Bhd [1995] 3 CLJ 783 SC ***(refd)***

Chor Phaik Har v. Farlim Properties Sdn Bhd [1997] 4 CLJ 393 FC ***(foll)***

Farlim Properties Sdn Bhd v. Goh Keat Poh & Ors (And Other Appeals) [2003] 4 CLJ 505 CA ***(refd)***

Legislation referred to:

National Land Code, s. 327

Rules of the High Court 1980, O. 18 r. 19

(Civil Appeal No: P-02-239-07)

For the appellants - Harpal Singh Grewal (Teh Boon Eng, Gurubachan Singh & K Kirubakaran with him); M/s Kiru & Yong

For the respondent - DP Vijandran (Mahinder Singh Dulku, VM Mohan & Abdul Fareed Gafoor with him); M/s Mahinder Singh Dulku & Co

(Civil Appeal No: P-02-241-07)

For the appellants - Joseph Yeo (Ranjit Singh & Tan Hiang Joo with him); M/s Ng & Anuar

For the respondent - DP Vijandran (Mahinder Singh Dulku, VM Mohan & Abdul Fareed Gafoor with him); M/s Mahinder Singh Dulku & Co

(Civil Appeal No: P-02-266-07)

For the appellants - Mureli Navaratnam; M/s Mureli Navaratnam)

For the respondent - DP Vijandran (Mahinder Singh Dulku, VM Mohan & Abdul Fareed Gafoor with him); M/s Mahinder Singh Dulku & Co

[Appeals from High Court Malaya, Pulau Pinang; Civil Suits No: 22-307-1996 (MT-2)]

Reported by Ashok Kumar

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JUDGMENT

Hasan Lah JCA:

Introduction

B **[1]** These three appeals were fixed before us on 11 May 2009. The parties agreed that all the three appeals be heard together and for the purpose of the appeal case no. 239 would be heard first and should the court agree with the appellant's appeal in this case there would be no necessity to hear the other two appeals. In case no. 241, the
C appellant is the 7th defendant whereas in case no. 266 the appellant is the 3rd defendant.

[2] On 15 May 2009 we unanimously allowed the appeals. We now give the grounds of our decision.

D **[3]** In this judgment the parties are referred to in their respective capacities in the High Court.

The Background Facts

[4] This case concerns various parcels of land commonly known as
E the Ayer Itam Estate, particularly described in schedule 1 annexed to the Re-Amended Statement of Claim ("the said lands").

[5] The said lands were at all material times registered in the name of Choong Lye Hock Estates Sdn Bhd ("Choong Lye Hock") who
F held the said lands as trustees for the estate of Chor Bah Say @ Chor Bar Say, deceased ("the Estate of Chor Bah Say") as to the 3/4 undivided shares in the said lands and, as registered and beneficial proprietor as to the remaining 1/4 undivided shares in the said lands.

[6] The Estate of Chor Bah Say was survived by the Estate of Chor
G Sin Kheng, the Estate of Chor Paik Guor, the Estate of Chor Sin Tee, the Estate of Chor Phaik See, the Estate of Chor Phaik Suan, the Estate of Oh Kee Lee ("these beneficiaries"), who are the 1st, 2nd, 4th, 5th and 6th defendants, in the High Court and the appellant in case no. 239 and also the Estate of Chor Phaik Hor and the Estate of Chor
H Phaik Sim.

[7] The said Chor Bah Say @ Chor Bar Say, deceased, died intestate.

[8] By two sale and purchase agreements dated 23 January 1992
I entered into by these beneficiaries and Choong Lye Hock as the vendors, and the plaintiff as the purchasers, these beneficiaries and Choong Lye Hock sold their respective undivided shares to the plaintif ("the Farlim Agreements"). Both the Farlim Agreements are almost identical.

[9] The remaining two beneficiaries of the Estate of Chor Bah Say, Chor Phaik Har and Chor Phaik Sim were named in both the Farlim Agreements but they did not execute both the Farlim Agreements as they did not agree to the sale of the said lands to the plaintiff.

[10] The plaintiff had by their letter dated 23 January 1992 invoked cl. 23 of both the Farlim Agreements and elected to proceed with both the Farlim Agreements notwithstanding that the said Chor Phaik Har and Chor Phaik Sim did not sign both the Farlim Agreements.

[11] Subsequent to the execution of the Farlim Agreements the plaintiff was notified that Chor Phaik Har had lodged a private caveat against Lot Nos 1457 and 1835 on 26 October 1991. The plaintiff applied to set aside the said caveat on 17 March 1992 *vide* Originating Summons No. 24-201-1992. On 18 June 1993 the Penang High Court ordered the removal of the private caveat but it was restored by the Federal Court on 5 July 1997.

[12] On 2 March 1993 the plaintiff applied for the approval of the FIC for the purchase of the said lands and the approval was given on 25 August 1992.

[13] Application for distribution and/or vesting order of the Estate of Chor Bah Say was filed on 12 April 1994 *vide* Originating Summons No. 24-326-1994 by Choong Lye Hock and four defendants. It was allowed by the High Court on 19 May 1995 and it was ordered that Choong Lye Hock be at liberty to execute and deliver to the 1st to 6th defendant a valid and registrable transfer of the said land in proportion to their undivided entitlement.

[14] The 1st to the 6th defendants gave notices to the plaintiff between the months of January to April 1995 stating that the plaintiff had failed to take steps to complete the transaction, delayed the completion and thereby was in breach of the fundamental terms of both the Farlim Agreements. They gave the plaintiff one month to remedy the breaches, failing which the Farlim Agreements would be regarded as terminated.

[15] The plaintiff replied to the said notices and denied that it was in breach of the Farlim Agreements as alleged. The plaintiff confirmed that they were ready and willing to complete the sale.

[16] The 1st, 2nd, 3rd, 4th and 6th defendants proceeded to sell their interests in the said lands to the 7th defendant in the months of February and March 1995. The sale was completed by the transfer of their respective interests in the said lands to the 7th defendant.

[17] The plaintiff then commenced this action against all the defendants on or about 27 September 1996. The plaintiff sought the following reliefs against them:

(i) a declaration that the respective notices of termination issued by the 1st to the 6th defendants are null and void and of no legal effect and that the Farlim Agreements are valid in law and still subsisting;

(ii) a declaration that the sale and purchase agreements between the 1st to the 6th defendants as vendors of their respective undivided shares in the said lands and the 7th defendant as purchaser and the subsequent transfers thereof to the 7th defendant are null and void and of no effect in law;

(iii) specific performance of the Farlim Agreements;

(iv) damages; and

(v) specific performance against the 7th defendant.

[18] The defendants then filed an application under O. 18 r. 19 of the Rules of the High Court 1980 to strike out the plaintiff's claim. The application was dismissed by the learned deputy registrar. On appeal to the judge in chamber by the defendants the High Court judge allowed the appeal. The plaintiff then appealed to this court against the decision and the plaintiff's appeal was allowed by this court. The judgment of this court was reported in *Farlim Properties Sdn Bhd v. Goh Keat Poh & Ors (And Other Appeals)* [2003] 4 CLJ 505 ("the *Goh Keat Poh*'s case").

Decision of the High Court

[19] After a full trial in the High Court the learned High Court judge held that the plaintiff had, on the balance of probability, proven its case against the 1st to the 6th defendants and he accordingly allowed the plaintiff's claim as prayed with costs.

[20] With regard to the plaintiff's claim against the 7th defendant the learned High Court judge held that the 7th defendant was guilty of fraud when it conspired with the 1st to the 6th defendants to deprive the plaintiff from enforcing its rights on the said lands. As such the 7th defendant did not obtain an indefeasible title to the said lands.

[21] One of the issues argued and decided in the High Court was whether both the Farlim Agreements were valid and subsisting. Under this issue the learned High Court judge had to decide whether *res judicata* was applicable to the case in respect of the decision of the

Federal Court in *Chor Phaik Har v. Farlim Properties Sdn Bhd* [1997] 4 CLJ 393 ("the *Chor Phaik Har*'s case"). The learned High Court judge held that *res judicata* did not apply and he relied on the judgment of this court in the *Goh Keat Poh*'s case.

[22] The learned High Court judge also held that the Farlim Agreements are valid, subsisting and enforceable. At p. 175 of the Appeal Record the learned High Court judge gave the following reason:

> Therefore it is my considered view that at the time the agreements were entered the 1st to 6th Defendants had intended to sell all their rights, title and interest in their respective shares and their hope to succeed in the said land *(spes successionis)*. Because at that time the administration of the estate of Chor Bar Say had not been completed, what they actually sold was their *spes successionis*.

Further, at p. 188 of the Appeal Record the learned High Court judge concluded that:

> As a conclusion I find although 1st to 6th Defendants may not have good title and interest in the said land at the time both Farlim Agreements were entered nevertheless in equity the agreements are good. Defendants had received valuable considerations in the form of various payments, solicitors' fees and cost. They cannot subsequently claim the agreements entered are not valid. The agreements are enforceable against them when they are vested with the title and interest in the said land ...

The Issues Raised In This Appeal

[23] The preliminary issues of law argued before us at the outset of the hearing of these appeals are the issues of *res judicata* and *stare decisis*. Learned counsel for the defendants submitted that the learned High Court judge erred when he found that the validity of both the Farlim Agreements and their enforceability was not *res judicata* as having been decided by the Federal Court in the *Chor Phaik Har*'s case. The defendant also raised the issue of *stare decisis* and submitted that the learned High Court judge was bound by the decision in the *Chor Phaik Har*'s case.

[24] Learned counsel for the defendants further submitted that based on the principles of *res judicata/issue estoppel* the plaintiff was estopped from claiming that the 1st to 6th defendants had agreed to sell their "alleged *spes successionis*". In the *Chor Phaik Har*'s case the Federal Court had decided that in the Farlim Agreements the beneficiaries have agreed to sell their rights, title and interest of their respective shares in the said lands.

[25] In response to that learned counsel for the plaintiff referred to the decision of this court in the *Goh Keat Poh*'s case where this court had considered the issue of *res judicata* by reason of the Federal Court's decision in the *Chor Phaik Har*'s case. In that case this court held that the plea of *res judicata* was inapplicable. Leave to appeal against that decision was refused by the Federal Court. The plaintiff also contended that the defendants could not relitigate the same issue that was determined by a previous coram of this court as it amounted to an abuse of process.

[26] Since the arguments on this issue are related to the judgments in the *Chor Phaik Har*'s case and the *Goh Keat Poh*'s case it is therefore necessary to take a closer look at the two judgments.

The *Chor Phaik Har*'s Case

[27] We would first deal with the judgment of the Federal Court in the *Chor Phaik Har*'s case. As stated earlier the Estate of Chor Bah Say held 75% of the said lands. Chor Phaik Har and her sister, Chor Phaik Sim were the remaining direct beneficiaries of the Estate of Chor Bah Say. They were parties to the Farlim Agreements but later they refused to execute the agreements on the ground that they did not agree on the price. Chor Phaik Har also alleged that the purported sale contravened the 1943 agreement. Hence, on 26 October 1991, Chor Phaik Har entered a caveat caveating the whole of the said lands. On 17 March 1992 the respondent, Farlim Properties Sdn Bhd (who is the plaintiff in the instant case) applied to the High Court for the removal of the caveat under s. 327 of the National Land Code.

[28] The High Court judge granted Farlim's application for the removal of the caveat on the ground that Farlim was a person aggrieved by the entry of the caveat in respect of the said lands. Chor Phaik Har then appealed to the Federal Court against the said decision.

[29] The Federal Court allowed the appeal and the caveat was restored. One of the issues considered and decided by the Federal Court in that case was whether a beneficiary under an intestacy has any interest in the property of a deceased person until the estate has been fully administered. The Federal Court after referring to the textbook on *The Law and Practice of Intestate Succession* by CH Sherrin and a passage in *Executors, Administrators and Probate* (17th edn, 1993) by Williams, Mortimer and Sunnecks, opined that:

> Based on the above commentaries, founded no doubt on the analogous principle of law concerning testate succession, it is our conclusion that in law, a beneficiary under an intestacy has no interest or property in the personal estate of a deceased person until the administration of the latter's estate is complete and distribution made according to the law of distribution of the intestate estate.

[30] The Federal Court then went on to decide whether the estate of Chor Bah Say had been fully administered at the time of the execution of the Farlim Agreements. In the process the Federal Court examined some of the clauses of the Farlim Agreements, namely the relevant preambles to the agreements, and made the following observation:

> From the above clauses, it is envisaged that the beneficiaries are entitled to the beneficial ownership of the ¾ undivided share of the estate of Chor Bah Say in the Ayer Itam Estate and that they have agreed to sell their rights title and interest of their respective shares in the lands which formed part of the Ayer Itam Estate to the respondents as set out in the Schedule thereto.

[31] On the main issue the Federal Court held at p. 197 that:

> Having regard to the above observation and the circumstances of the whole case, we are satisfied that at the date of the execution of the sale agreements, the administration of the estate of Chor Bah Say has not been completed. It follows that until his estate has been fully administered by the administrators and distribution made according to law, the beneficiaries have no interest or property in the estate of Chor Bay Say so as to give them any title to the lands. Here, we agree with counsel for the appellant that the beneficiaries of his estate, being vendors of the lands under the sale agreements could not have covenanted to convey any title to the respondents. In the result, the respondents cannot rely on the sale agreements to justify their status as 'person aggrieved" under s. 327 of the Code ...

The *Goh Keat Poh*'s Case

[32] The defendants in the instant case applied for the striking out of the plaintiff's action under O. 18 r. 19 of the Rules of the High Court. The defendants' application was dismissed by the learned assistant registrar. The defendants then appealed to the Judge in Chamber against the decision. The defendants' appeal was allowed by the High Court judge. The High Court judge struck out the plaintiff's claim on the ground of, *inter alia*, *res judicata* and *issue estoppel*.

[33] Dissatisfied with the decision of the High Court judge the plaintiff then appealed to this court against the decision. This court then allowed the plaintiff's appeal. On the issue of *res judicata* this court, through Mohd Noor Ahmad JCA (as he then was) said at p. 516:

> To us, it is indeed clear from the judgment in *Chor Phaik Har v. Farlim Properties Sdn Bhd*, *supra* that the Federal Court did not at all consider on the validity of the 1992 Agreements. The issue was only raised by the learned counsel for the appellant in the case in his submission before the court. However, the court merely held that as the administration of the deceased's estate was not completed at that point

> of time the beneficiaries had no title to pass to the plaintiff and as such, the plaintiff was not "a person or body aggrieved" for the purpose of removal of the private caveat. Whatever it is, *res judicata* can never be applied in favour of the defendants because *res judicata* only prohibits a cause of action from being re-litigated between the same parties but in that case the defendants were never a party.

[34] The administration of the estate of Chor Bah Say was completed sometime in 1995 after distribution order was obtained from the High Court on 19 May 1995. That was the position when the appeal came before the High Court judge. On the issue of the validity of the Farlim Agreements this court then made the following observation at p. 518:

> What is discernible from the authorities is that a beneficiary to a deceased's estate can enter into a contract of sale of land involving a subject matter which is not subsisting in the sense that the land is still in the deceased's name. However, when the beneficiary comes to be in a position to pass on the title to the purchaser he can be compelled by the purchaser to make good the contract out of that interest. Although in the present appeal, cl. 1.1. of the relevant 1992 Agreements states that the sale is in respect all the rights, title and interest and shares of all the beneficiaries in the said lands, to our mind, having regard to the fact that the administration of the deceased's estate had not been completed at the time of its execution, the subject matter involved in the transaction is none other than the sale of *spec successionis*. As specific performance of the 1992 Agreements as prayed for by the plaintiff in the action is an equitable relief the court will look at the substance rather than the form. Anyway, it is still open to the plaintiff to amend its pleading to cover this point, if it so wishes, before the trial of the action.

Decision Of This Court

[35] We have carefully considered the judgment of the Federal Court in the *Chor Phaik Har*'s case and we are satisfied that the Federal Court, in deciding the issue whether Farlim was a person aggrieved within the meaning of s. 327 of the National Land Code, did consider the issue of the validity of the Farlim Agreements. The Federal Court clearly and unequivocally held that in the agreements the beneficiaries had agreed to sell their rights title and interest of their respective shares in the said lands. The Federal Court also held that in law a beneficiary under an intestacy has no interest or property in the personal estate of a deceased person until the administration of the deceased's estate is complete and distribution made according to the law of distribution of the intestate estate. As such the beneficiaries of the Estate of Chor Bah Say had no interest or property in the Estate of Chor Bah Say so as to give them any title to the land. The beneficiaries could not therefore have covenanted to convey any title to the plaintiff.

[36] We are unable to agree with the contention that the subject matter of the Farlim Agreements was the *spes successionis* the defendant had in the said lands for the simple reason that the Federal Court has made a finding that in the Farlim Agreements the beneficiaries have agreed to sell their rights title and interest of their respective shares in the said lands. Furthermore the term "*spes successionis*" was never mentioned in the Farlim Agreements. As such the question of disposing a *spes successionis* did not arise. The plaintiff did not raise the issue of *spes successionis* before the Federal Court. The plaintiff must abide by the decision as *res judicata* applies not only to issues the court was actually required to decide but also to every issue which the parties exercising reasonable diligence might have raised at that time. (*Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd* [1995] 3 CLJ 783).

[37] Applying the principles of *res judicata/issue estoppel* the plaintiff was therefore estopped from claiming that the defendants had agreed to sell their "alleged *spes successionis*". As such we are of the view that the learned High Court judge has erred in coming to the decision that what the 1st to 6th defendants had intended to sell was their *spes successionis*.

[38] We are also of the view that the issue of the validity of the Farlim Agreements has been conclusively decided by the Federal Court in the *Chor Phaik Har*'s case when it held that the beneficiaries did not have interest or property in the estate of Chor Bah Say and they could not have covenanted to convey any title to the plaintiff. The decision of the Federal Court is binding on the parties to the Farlim Agreements and anyone who seeks to rely on them to enforce their rights. It is to be noted that the plaintiff in the instant case was also the plaintiff in that case. On this issue we would refer to the observation made by Peh Swee Chin FCJ in *Asia Commercial Finance (M) Berhad v. Kawal Teliti Sdn Bhd* (*supra*) where the learned judge, after considering a host of authorities on the doctrine of *res judicata*, stated:

> On the other hand, *issue estoppel* literally means simply an issue which a party is estopped from raising in a subsequent proceeding. However, *issue estoppel*, in a nutshell, from a consideration of case law, means in law a lot more, ie, that neither of the same parties or their privies in a subsequent proceeding is entitled to challenge the correctness of the decision of a previous final judgment in which they, or their privies, were parties. This sounds like explaining a truism, but it is the corollary from that statement that is all important and that could have given birth to the controversies alluded to above, the corollary being that neither of such parties will be allowed to adduce evidence or advance any argument to contradict such decision ...
>
> It is important to bear in mind the manner in which *issue estoppel* operates in preventing such contradiction of the previous judgment.

A There is one school of thought that *issue estoppel* applies only to issue actually decided by the court in the previous proceedings and not to issues which might have been and which were not brought forward, either deliberately or due to negligence or inadvertence, while another school of thought holds the contrary view that such issues which might have been and which were not brought forward as described, though
B not actually decided by the court, are still covered by the doctrine of *res judicata,* ie, doctrine of *estoppel per rem judicatum*.

We are of the opinion that the aforesaid contrary view is to be preferred; it represents for one thing, a correct even though broader approach to the scope of *issue estoppel*. It is warranted by the weight of
C authorities to be illustrated later. It is completely in accord or resonant with the rationales behind the doctrine of *res judicata*, in other words, with the doctrine of *estoppel per rem judicatum*. It is particularly important to bear in mind the question of the public policy that there should be finality in litigation in conjunction with the exploding population; the increasing sophistication of the populace with the law
D and with the expanding resources of the courts being found always one step behind the resulting increase in litigation.

[39] The decision of the Federal Court is binding on this court and every court in this country. It is our decision that we are bound by *stare decisis* to follow it. Similarly the High Court is obliged to apply the law
E as stated by the Federal Court in the *Chor Phaik Har*'s case.

[40] For the reasons stated above we allowed the appeal with costs here and below and the decision of the learned High Court judge was set aside.

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